

SERVICE DELIVERY AGREEMENT

ENTERED INTO BETWEEN:-

DIHLABENG LOCAL MUNICIPALITY

and

MAKGOTAMISHE BUILDING CONSTRUCTION CC

WHEREAS

- (a) Dhlabeng Local Municipality is a local authority with jurisdiction within its demarcated municipal area;
- (b) Dhlabeng Local Municipality performs various functions to enable it to perform its legal responsibilities and duties;
- (c) Dhlabeng Local Municipality wishes to engage and the service provider wishes to be engaged as an independent service provider to provide the upgrading of roads and storm-water in Mautse as specified in the Agreement related to the appointment of a service provider;
- (d) For the purpose of this Agreement, Makgotamishe Building Construction CC shall be engaged to provide and undertake the upgrading of roads and storm-water in Mautse for Dhlabeng Local Municipality;
- (e) In addition to the expectation by Dhlabeng Local Municipality from the service provider to fulfill its traditional role and functions in terms of legal compliance;

Dhlabeng Local Municipality wishes to agree to benchmarks of service delivery with the service provider and a system of remuneration by Dhlabeng Local Municipality of the service provider, measured against and linked to the agreed benchmarks;
- (f) Dhlabeng Local Municipality wishes to attain their objectives of empowerment of previously disadvantaged individuals as well as other applicable legislation in this regard;
- (g) Makgotamishe Building Construction CC is desirous of assisting Dhlabeng Local Municipality in attaining the intensions, objectives and benchmarks as contained in this Agreement;



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- (h) Makgotamishe Building Construction CC understands, underwrites and commits to the principles of due diligence, transparency and good governance in fulfilling its role and functions / responsibilities towards Dihlabeng Local Municipality; and
- (i) The parties will comply with the Constitution of the Republic of South Africa as amended from time to time and applicable legislation.

PURPOSE

- (a) The purpose of this Service Delivery Agreement is to formalize an arrangement between the Dihlabeng Local Municipality and Makgotamishe Building Construction CC (hereinafter, the Service Provider) to implement security as specified in the attached proposal.
- (b) Service delivery agreement means an agreement between a municipality and an institution or person mentioned in section 76(b)(v) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) in terms of which a municipal service is provided by that institution or person, either for his own account or on behalf of the municipality.

NOW THE PARTIES DO HEREBY AGREE:

I. INTERPRETATION

... and shall not be in its interpretation.

... as an expression that ... shall include ... the plural and vice ... the meaning assigned to them ...

... the Local

... This agreement shall be deemed to commence on the 1 October



"service" a service as contained in the main agreement between the parties;

"service plan" is the plan of service in line with Annexure "1 and 2" undertaken by the service provider on behalf of Dhihabeng Local Municipality which shall be that;

"Acceptance of quotation" means the signing of the agreement by the municipality which brings this agreement into force;

"Contract documents" means this service provision document, tender document or request for proposal, preliminaries, appointment letter, specifications, fees, scope work; also any documents annexed to the agreement documents by agreement between the parties;

"Contract price" means the amount specified in the main agreement and service plan of this agreement;

"Service Provider" means the person, partnership, company, close corporation, community of service provider or other legal body that agree to the scope of this agreement and is so identified in the schedule;

"Date of completion" means the completion of all work in this agreement including rectification of all defective and incomplete work to the reasonable satisfaction of the municipality;

"Days" means calendar days (including Saturdays, Sundays and public holidays, school holidays, etc);

"Final account" means the amount to be paid to the contractor in terms of clause 14 hereof;

"Guarantee" means the guarantee in the exact words of the guarantee form as provided with this document and to be provided by one or more guarantors on behalf of the service provider if required in writing by the municipality. The guarantor(s) will be responsible to finish the agreed work and/or for payment to the municipality of an amount of up to a maximum of 10% (ten percent) of the agreed sum, in the event that the service provider does not complete the works;

"Notice in writing" means a written notice delivered by either party to the other either by registered post, by hand or by telefacsimile, together with reasonable proof of the date of delivery;

"Payment" means payment by the municipality to the service provider of the amount(s) as agreed within 30 days of the completion of certain parts of the work to the satisfaction of the municipality;

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“Practical completion” means that stage of completion when a work is completed sufficiently for it to be properly used for the purpose for which it was constructed;

“Site” means the place where a work is to be executed.

“Variations” means changes to the works the service provider issues to its staff and/or team as instructions in writing excluding extra work not described in a written instruction from the municipality, which such work will not be paid for the municipality;

“Works” means the work/service which is to be done by the service provider in terms of this service level agreement and as set out in the contract documents.

2. APPOINTMENT

Dihlabeng Local Municipality hereby appoints the service provider who accepts such appointment as an independent service provider to perform the work detailed in the service plan.

3. SERVICE PROVIDER NOT EMPLOYEE OR AGENT IN RESPECT OF OTHER SERVICES

Neither the service provider nor any other person performing any duties or engaged in any work on its instruction shall be an employee or agent of Dihlabeng Local Municipality.

4. PERIOD

4.1 This Agreement shall, subject to any alternative agreement between the parties, endure for the period 4 months from date of signature and shall be renewable monthly except for a case where funding has been approved by Dihlabeng Local Municipality and in such case it will be for the period Dihlabeng had approved and the agreement will be renewable on a monthly basis and shall not be longer than twelve months.

4.2 the period of the agreement may be terminated and/or renewed on written agreement between the parties,

5. SERVICE PROVIDER'S OBLIGATIONS

The service provider shall:

- (a) Upon notification of the acceptance of the quotation, commence to execute work and carry out the work in accordance with this agreement, to the reasonable satisfaction of the municipality;

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- (b) Provide all necessary labour, equipment etc the work, complete the work as set out in this agreement;
- (c) Comply with all applicable statutory provisions and municipal requirements;
- (d) Comply with all written instructions of the municipality to make variations to the work undertaken;
- (e) Give any instructions and/or explanations and/or variations to its employees including any relevant advice to assist the employees to understand the service provision documents;
- (f) Inspect the work to decide when it is at the stage of practical completion and, when satisfied, certify that practical completion has occurred;
- (g) Inspect the work to decide when it is at the stage of final completion and, when satisfied, certify that final completion has occurred;
- (h) Decide on the settlement of any dispute that may arise between the service provider and the municipality, subject to the conditions of clause 17.

6. MUNICIPALITY'S OBLIGATIONS

The municipality shall:


- 6.1 Hand over the information as specified in the schedule mentioned hereafter;
- 6.2 Make payment to the service provider for the works as set out in the service plan;

7. BREACH AND TERMINATION

7.1 Should the Service Provider;

- 7.1.1 fail to comply with any term of this Agreement or any of the terms and conditions of the addendum and benchmarks; or
- 7.1.2 be wound up, or its estate sequestrated, whether provisionally or finally, or be placed under judicial management, or if the service provider defaults in the payment of its liabilities generally; or
- 7.1.3 commit an act of insolvency; then and, in any of those events, Diklabeng Local Municipality shall immediately be entitled, without prejudice to its rights in terms of this Agreement to cancel this Agreement in writing to the service provider.

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- 7.2 Should Dihlabeng Local Municipality be dissatisfied with the manner in which Makgotamishe Building Construction CC is performing the upgrading of roads and storm-water in Mautse, will Dihlabeng Local Municipality give Makgotamishe Building Construction CC 30 (thirty) days notice to rectify the situation, and clearly specify in which regard Makgotamishe Building Construction CC is not fully complying with the agreement.

Should Makgotamishe Building Construction CC not be able to rectify the situation within in the 7 (seven) days period, shall Dihlabeng Local Municipality be entitled to cancel the agreement.



- 7.3 Any remuneration paid or payable by Dihlabeng Local Municipality to the service provider shall be made on a pro rata basis for work completed up to the date of actual termination of this Agreement and shall be reconciled between the parties with effect from the date of inception of this Agreement. Should there be any dispute about any account of Makgotamishe Building Construction CC, must such an account be taxed.
- 7.4 The service provider warrants that he/she has not made, and will not make any promises to any person of the municipality, nor to any relative or business associate or political associate of the municipality to do or not to do anything as an inducement to award this agreement to the service provider or to allow any such wrongful inducement to gain an advantage in the carrying out of the contract.

Such conduct will serve as good grounds for cancellation.

- 7.5 The establishment by the municipality of proof of improper conduct by the service provider shall be grounds for immediate cancellation of the agreement by the municipality and of payment by the service provider to the municipality of any loss suffered by the municipality due to such cancellation.
- 7.6 Fails, in the opinion of the municipality, to carry out the works with reasonable diligence; and/or
- 7.7 Refuses to comply with an instruction issued by the municipality then the municipality shall, by notice in writing, inform the service provider of such default and, if such default shall continue for a further period of 30 days, cancel this contract and employ others to complete the works. The cost of such work by others shall be a debt due by the service provider to the municipality.

8. COSTS CONSEQUENT UPON BREACH

In the event of the either party being in breach of this Agreement, each party acknowledgement and agrees to pay legal costs incurred by either of them in enforcing its rights on the scale as between attorney and own client.



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9. CESSION

- 9.1 The service provider shall not sub-contract or cede this agreement, including any portion thereof or interest therein, unless written permission is granted by Dihlabeng Local Municipality and on such conditions as Dihlabeng Local Municipality may approve.
- 9.2 The service provider shall ensure that in all its activities supports the principles of good governance, transparency and objectivity.

10. WARRANTY OF QUALIFICATION

The service provider warrants that it has the necessary knowledge and expertise of the local government environment and of the guiding policies and legislation to enable it to fulfill its obligations in terms of this Agreement.

11. SPECIALIST WORK

The municipality may directly employ specialist to do work which are beyond the expertise of the service provider and which are not included in the schedule on site whilst the work is in progress. The service provider shall allow such specialist to do their work as and when needed and shall make available all facilities to enable such work to be properly done to the satisfaction of the municipality.

12. VIS MAJOR

In the event that either of the parties or both parties cannot discharged its obligations in terms of this agreement as a result of an act of God neither of the parties shall be held liable for such non-performance.

13. VARIATION OF WORK

- 13.1 The service provider undertakes to agree to any reasonable request by Dihlabeng Local Municipality for the variation or substitution of any clause or activity and resultant possible cost implication.
- 13.2 The payment due to the service provider in respect of such varied work shall be subject to negotiations and on the same terms and conditions of this Agreement.

14. PAYMENT

Dihlabeng Local Municipality shall pay the service provider the total price of any work formally agreed to in writing, as outlined in the "service plan" within 30 (thirty) days of receipt of the VAT Invoice (or other terms as agreed).

15. RETENTION

15.1 Retention will be applicable as follows:

10% of the contract price retention completion, being payable at the end of the guarantee period subject to a satisfactory standard of completion being attained.

15.2 This guarantee shall expire 12 months after the satisfaction standard of completion being issued.

16. DOMICILIUM

16.1 These parties choose domicilium citandi et executandi ("domicilium") for the purposes of giving any notice, the payment of any sum, the serving of any process or for any other purpose arising from this agreement as follows:

Dihlabeng Municipality:

The Municipal Manager
Dihlabeng Local Municipality
9 Muller Street East
BETHLEHEM, 9700

Tel no: 058 303 5732
Fax no: 058 303 5076

The Service Provider:

Makgotamishe Building
Construction CC
P O Box 113
WINTERVELD, 0198

16.2 Each of the parties shall be entitled from time to time on 14 days written notice to the other to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or post restante.

16.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

16.4 Any notice given and any payment made by one party to the other ("the addressee's") which:

16.4.1 Is delivered by hand during the normal business hours of the addressee's domicilium for the time being shall be presumed, until the contrary is proven to have been received by the addressee;

16.4.2 Is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicile for the time

being shall be presumed, unless the contrary is proof, to have been received by the addressee on the seventh day after the date of posting; and;



16.4.3 Is transmitted by facsimile where it is transmitted during normal business hours or, if transmitted outside normal business, within one hour of normal business hours on the next general business day.

17. DISPUTES

- 17.1 A dispute between the parties relating to any matter arising out of this agreement or the interpretation thereof, shall be referred to arbitration, by either of the parties, by way of a notice to the other party, in which notice particulars of the dispute are set out.
- 17.2 When arbitration proceedings are held it shall not be necessary to observe or carry out the usual formalities of procedure (e.g. There shall not be any pleadings or discovery or in accordance with the strict rules of evidence).
- 17.3 Arbitration shall be held immediately and with a view to its being completed within 30 days after it is demanded.
- 17.4 The arbitration for such arbitration proceedings shall be a suitably qualified person agreed upon by the parties and, failing agreement, nominated by the chairperson for the time being of the Association of Arbitrators (Southern Africa).
- 17.5 The decision of the arbitrator shall be final and binding on the parties, who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 17.6 The "arbitration" clause in this agreement shall be severable from the rest of the agreement and therefore shall remain effective between the parties after this agreement has been terminated.
- 17.7 No clause in this agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

18. GENERAL

- 18.1 This document constitutes the sole record of the Agreement between the parties;
- 18.2 No party shall be bound by any express or implied term representative, warranty, promise or the like not recorded herein;

18.3 No addition to, variation or agreed cancellation of this Agreement shall be any force or effect unless in writing and signed by the authorized and duly delegated representatives for the parties concerned; and

18.4 No extension of time or indulgence which either Party ("the grantor") may grant to the other ("the guarantee") shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the future.

19. **CONFIDENTIALITY**

The Parties undertake either during the term of the Agreement or after termination or expiration of the Agreement not to disclose any proprietary or confidential information or intellectual property relating to each other and the operations without each other's prior written consent. The determination of whether a Party's information is proprietary or confidential shall be in the sole discretion of each Party.

20. **TERMS OF AGREEMENT**

The terms of agreement shall be interpreted in whole in the following preference:

- This service delivery agreement;
- The proposal; or tender document;
- The appointment letter;
- Specifications based on the Occupational Health and Safety Act, 1993, (Act no 85 of 1993)

SIGNED AT BETHLEHEM ON 08 DAY OF OCTOBER 2010

NAME: DIHLABENG LOCAL MUNICIPALITY

SIGNATURE:



AS WITNESS SIGNATURES:

1. 

2. 

FOR AND BEHALF OF DIHLABENG LOCAL MUNICIPALITY AND WARRANTING HIS/HER AUTHORITY



NAME: _____

SIGNATURE: _____

AS WITNESS SIGNATURES:

1. Betha

2. Meach

**FOR AND BEHALF OF SERVICE PROVIDER AND WARRANTING HIS/HER
AUTHORITY**


 *meach*

MAKGOTAMISHE BUILDING CONSTRUCTION CC

ANNEXURE 1

1. THE WORK

To provide and undertake the upgrading of roads and storm-water in Mautse.



The service provider will be expected to work closely with the Municipal Manager, Director: Public Works, Heads of Department and the Project Manager Unit and appropriate officials and members of the Council.

The service provider will be expected to focus on the following key strategic and operational areas:

- Any other service as may be required during the project.
- Site clearing, bulk excavation, preparation of roadbed, sub base and base, filling and related items.
- Trenching and installation of stormwater drainage, kerbing and paving which shall be sub-contracted to local SMME's.
- You will be responsible for the re-establishment of provided survey points recklessly moved or destroyed during the execution of your work.
- Comply with Council's working hours restrictions.
- Comply with OHS regulations and procedures.
- Testing including providing testing equipment, together with submission of conforming the results.
- Supply, place, comply and grade all fill (with suitable material) to establish final levels satisfactory to the consulting engineer.
- Removal and appropriate disposal of all excavated material to an area indicated to you, unless otherwise specified.
- Establish and maintain site containment and erosion control.
- Dust control as required (water truck).
- Ensure all vehicles are free of mud before using public or sealed roadways and ensure vehicles are properly loaded to prevent dropping of material to ensure roads are kept clean.
- Provide temporary roads, ramps and the like, including maintaining access for others during the duration of the works.
- Provide safety barriers, safety rails, fences, signs and other safety equipment as required to maintain access for others during the safe working environment.
- All equipment to be in safe operating condition. All operators to be competent and licensed.

2. CONTRACT DOCUMENTS

The contract documents comprise of the following:


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Appointment letter

Signed service delivery agreement

Implementation plan

Occupational Health and Safety Specifications

3. **THE SITE**

Dihlabeng Local Municipality jurisdiction area.

4. **SPECIFICATION OF THE WORKS**

- Any other service as may be required during the project
- Site clearing, bulk excavation, preparation of roadbed, sub base and base, filling and related items.
- Trenching and installation of storm water drainage, kerbing and paving which shall be sub-contracted to local SMME's.
- You will be responsible for the re-establishment of provided survey points recklessly moved or destroyed during the execution of your work.
- Comply with Council's working hours restrictions.
- Comply with OHS regulations and procedures.
- Testing including providing testing equipment, together with submission of conforming the results.
- Supply, place, comply and grade all fill (with suitable material) to establish final levels satisfactory to the consulting engineer.
- Removal and appropriate disposal of all excavated material to an area indicated to you, unless otherwise specified.
- Establish and maintain site containment and erosion control.
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- Ensure all vehicles are free of mud before using public or sealed roadways and ensure vehicles are properly loaded to prevent dropping of material to ensure roads are kept clean.
- Provide temporary roads, ramps and the like, including maintaining access for others during the duration of the works.
- Provide safety barriers, safety rails, fences, signs and other safety equipment as required to maintain access for others during the safe working environment.
- All equipment to be in safe operating condition. All operators to be competent and licensed.

5. **DATE OF COMMENCEMENT:** Date of signing of this agreement

6. **DATE OF REVIEW:** 31 December 2010.



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7. TIME FOR AND MANNER OF COMPLETION OF THE WORKS

Meeting the target of 100% within 4 months from date of appointment.

8. CONTRACT PRICE

R4 365 500,90 including VAT and disbursements.

9. PAYMENT

Monthly reports should be submitted and measured against the submitted implementation plan

Payments will be made in line with the implementation plan



10. SERVICES, TOOLS AND EQUIPMENT TO BE PROVIDED BY THE CONTRACTOR

Labour

Necessary equipment

11. SERVICES/TOOLS/EQUIPMENT TO BE ARRANGED BY THE MUNICIPALITY:

Financial statements





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ANNEXURE 2

PROJECT TIMELINE

ACTIVITY (STEPS TO BE FOLLOWED IN THE PROJECT)	DELIVERABLE (WHAT TO BE DELIVERED AS A PRODUCT)	PERFORMANCE INDICATOR (PROOF OF WORK DONE)	PERFORMANCE EXPECTED DATE OF DELIVERY	COST (AMOUNT TO BE PAID PER DELIVERABLE)
Contractual	Tender acceptance letter	Letter of acceptance from contractor	Within 7 days from appointment but before establishment of site	Not applicable
Contractual Requirements	Deed of Suretyship and Insurance Policies	Original Guarantee and Insurance with the municipality	Within 14 days from appointment but before establishment of site	Not applicable
Construction Planning	Construction Programme	Construction Programme approved by the consulting engineer	Within 14 days from date of site handover	Not applicable
Construction	Execution of the works as per scope of works	Construction on schedule with programme	Contract Period	Contract Price
Project Completion	All works completed within specification	Practical Completion Certificate	On completion of project	Not applicable
Defects Liability Period	Periodic remedial work to be done by the contractor	Final Approval Certificate	12 months after issuing of completion certificate	Retention

Monthly accounting is done on a basis that payments will be made on deliverables as stipulated in Annexure 2.



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MASEPALA WA LEHAE
LOCAL MUNICIPALITY
PLASSLIKE MUNISIPALITEIT

HEAD OFFICE/HOOFKANTOOR

9 Muller Street East/Mullerstraat-Oos 9

PO Box 551, Bethlehem, 9700

Tel: (058) 303 5732 Fax: (058) 303 5076

Please address reply to: MUNICIPAL MANAGER
Rig asb antwoord aan: MUNISIPALE BESTUURDER
Oor referensie
Oms Verwys

E-mail: info@dihlabeng.co.za

Web site / Webblad: www.dihlabeng.org.za

Your Reference
U verwysing

Department
Municipal Manager

Makgotamishe Building Construction CC
PO Box 113
Winterveld
0198

9th September 2010

Dear Sir/Mam

BID NUMBER: MIG/FS0509/R,ST/09/11: UPGRADING OF ROADS AND STORM-WATER MAUTSE

It is our please to inform you of your appointment for the construction of ^{improving} paved roads in Behlukung. Your tender to the value of R 4,365,500.90 including VAT and disbursements has been approved. Further details will be provided by the Engineer.

Please provide the required Deed of Suretyship and insurance policies together with receipts for payment of premiums within 14 days of receiving this letter. Documents must be sent to Morgan Govender, 33 Klipspring Street, Harrismith, 9880 with copies to my office.

Please note that you may not commence with the work before receiving an instruction from the engineer to do so.

Please be advised that our VAT number is 4000846529, which must be present on all of our invoices in order to secure payment for your services. If you have any queries please contact our Mr. S. Mpetshehi at 058-303 5732.

We trust you find this in order

Sincerely


Municipal Manager
Thabiso Tsoseli

cc: Morgan Govender
33 Klipspring Street
Harrismith
9880

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EXTRACT FROM THE MINUTES OF A MEETING HELD BY THE DIHLABENG LOCAL MUNICIPALITY

EXECUTIVE COMMITTEE HELD ON

COUNCIL HELD ON 11 DECEMBER 2009ITEM NO. 129/2009 (1/1/15) (15/3/1)RECORDS FOR ATTENTION OF:

MANAGER : SECRETARIAT

→ RECORDS MUNICIPAL MANAGER

ITEM 129/2009

(DEPARTMENT: MUNICIPAL MANAGER)

OCCUPATIONAL HEALTH AND SAFETY SPECIFICATIONS BASED ON THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993) (MM/1/15)RESOLVED:

1. that the Dhlabeng Local Municipality adopt the specifications based on the Occupational Health and Safety Act, 1993 (Act 85 of 1993).
2. that all departments within the Dhlabeng Local Municipality be requested to include this document in 1 above in all tender documents and specifications.

Meeting:	Council 11/12/2009	Submitted by Directorate:	Municipal Manager
Ref No:	MM/1/1/15	Author:	J Botha
Doc No:	129/2009	Referred from:	EXCO 3/12/2009
<u>CLAUSE:</u>	<u>ACTION:</u>	<u>RESPONSIBLE DEPARTMENT:</u>	<u>DUE DATE:</u>
2	Implementation	Secretariat	Continued process
Status			

COMMENTS:

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EXTRACT FROM THE MINUTES OF A MEETING HELD BY THE DIHLABENG LOCAL MUNICIPALITY

EXECUTIVE COMMITTEE HELD ON 3 DECEMBER 2009

COUNCIL HELD ON

ITEM NO 129/2009 (1/1/15) (

RECORDS FOR ATTENTION OF:

MANAGER : SECRETARIAT

RECORDS

ITEM 129/2009



(DEPARTMENT: MUNICIPAL MANAGER)

OCCUPATIONAL HEALTH AND SAFETY SPECIFICATIONS BASED ON THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993) (MM/1/15)

RECOMMENDED:

1. that the Dihlabeng Local Municipality adopt the specifications based on the Occupational Health and Safety Act, 1993 (Act 85 of 1993).
2. that all departments within the Dihlabeng Local Municipality be requested to include this document in 1 above in all tender documents and specifications.

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ITEM 129/2009

(DEPARTMENT: MUNICIPAL MANAGER)

**OCCUPATIONAL HEALTH AND SAFETY SPECIFICATIONS BASED ON THE
OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993)
(MML/1/15)**

1. **PURPOSE**

To have Council pronounce itself regarding the approval of the Occupational Health and Safety Specifications based on the Occupational Health and Safety Act, 1993 (Act 85 of 1993).

2. **BACKGROUND**

2.1 In terms of the above-mentioned Act the Dikhalabeng Local Municipality must adopt specifications regarding occupational health and safety matter.

2.2 In every appointment of a contractor this specification must be part of the appointment letter of the contractor in order to safeguard the Dikhalabeng Local Municipality.

2.3 In terms of this specification the Council must see to it that the contractor conducts himself in terms of the specification established by Council.

3. **FINANCIAL IMPLICATIONS**

None at this stage.

4. **LEGAL IMPLICATIONS**

In terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) the Council must adopt and implement the specifications.

5. **RECOMMENDED:**

5.1 that the Dikhalabeng Local Municipality adopt the specifications based on the Occupational Health and Safety Act, 1993 (Act 85 of 1993).

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5.2 that all departments within the Dikhalabeng Local Municipality be requested to include this document in 1 above in all tender documents and specifications.

PREPARED BY:



J.L. Botha
Manager: Secretariat

RECOMMENDED AND APPROVED FOR SUBMISSION BY:



M.E.S. Mthwalo
Acting Municipal Manager

JLB/mp
9 November 2009



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**OCCUPATIONAL HEALTH AND SAFETY SPECIFICATIONS
BASED ON THE OCCUPATIONAL HEALTH AND SAFETY
ACT, 1993 (Act No. 85 of 1993)**

**FOR
DIHLABENG LOCAL MUNICIPALITY**



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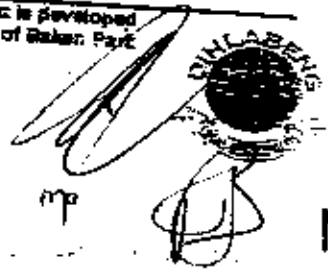
4.23 Health and Safety file

5. Contractor undertaking to comply with health and safety specifications

6. CONCLUSION

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October 2006



1. DEFINITIONS

- OHSACT

The Occupational Health and Safety Act (Act No.85 of 1993)

- Construction Regulations

Means the Occupational Health and Safety Act's No 85 of 1993, Construction Regulations that came into effect on 18 July 2003

- Employer

Means any person for whom the work construction work is being undertaken or performed in this instance (Diblseng Local Municipality)

- Principal Contractor

Means an employer, as defined by Section 1 of the OHSACT who performs construction work and is appointed by the Employer to be in overall control and management of the construction site and works. Herein after referred to as Contractor.

- Health and Safety Specification

Means a documented specification of all health and safety requirements pertaining to the associated works on a construction site, to ensure the health and safety of persons working, visiting, passing, staying and working close to the site

- Health and Safety Plan

Means a documented plan that addresses hazards identified and includes safe work procedures to mitigate, reduce or control hazards identified

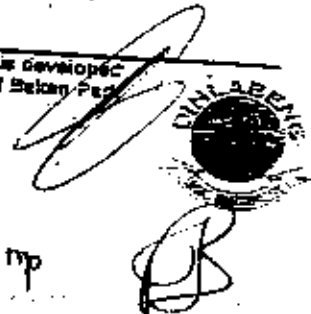
- Health and Safety File

Means a file of records in permanent form containing the information as contemplated in the abovementioned regulations

- SWP

Means Standard Working Procedures developed from risk assessments

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2. INTRODUCTION

This health and safety specifications covers the health and safety requirements to be met by the Contractor who will be appointed by Tumotse Consulting Holdings (Pty) Ltd on behalf of Dithlabeng Local Municipality to carry out construction of Internal services (water and sewer) bulk services (water and sewer), construction of roads and construction of houses and social facilities in Baken Park, Bethlehem, Free State.

The health and safety specifications shall be read in conjunction with the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and the corresponding Construction Regulations as well as all other safety codes and specifications referred to in the said Construction Regulations.

This health and safety specifications, the approved health and safety plan as well as the Occupational Health and Safety Act (Act No. 85 of 1993), shall be kept on the construction site and made available for inspection by employees, inspectors and other persons entering the site of works.

The specifications will apply for the duration of the project, compliance with the specifications will not absolve the principal contractor from complying with any other minimum legal requirements and the principal contractor will carry full responsibility regarding the adherence to the health and safety specifications and ensure the health and safety of his employees and any sub-contractors used to carry out construction work on the project.

It must be noted that the Employer or its representative may stop the contractor from executing construction work, which is not in accordance with the Employer's health and safety specifications for the project, or which poses a risk to the health and safety of any persons on the construction site.

3. TENDERS

The Contractor shall submit the following with this tender:

- a) A documented Health and Safety Plan as stipulated in Regulation 5 of the Construction Regulations. These specifications form the basis of the Health and Safety Plan which must be in line with the Construction Regulations and will be subject to approval by the Employer;
- b) as an annexure to the health and safety plan, a detailed health and safety policy outlining the Contractor's stance on and principles adopted for health and safety;
- c) as an annexure to the health and safety plan, a declaration to the effect that he has the competence and necessary resources to carry out the work safely in compliance with Construction Regulations;

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d) proof or demonstration to the Employer that as the Contractor, he has made sufficient provision for the cost to implement and maintain the health and safety plan proposed by themselves (Contractor) to meet the requirements of this health and safety specification as well as that of the OHSACT and its Regulations as required by Construction Regulation 4(1).

Failure to submit the foregoing will lead to the conclusion that the Contractor will not be able to carry out the work under the contract safely and in accordance with the OHSACT and its Regulations.

4. SPECIFICATIONS

4.1 Notification of Construction Work (attached ANNEXURE 2)

After award of the contract but before commencement of the construction work, the Contractor shall in terms of Construction Regulation 3 (1), notify the Provincial Director of the Department of Labour in writing if the construction work involves the following:

- a) the demolition of structures and dismantling of fixed plant at a height of 3 meters or more;
- b) the use of explosives in carrying out construction work;
- c) excavation work deeper than 1 meter;
- d) working at a height greater than 3 meters above ground or landings;
- e) exceeds 30 days or will involve more than 300 person days of construction work.

The notification to the Provincial Director must be done on the attached Annexure 2, the Contractor shall ensure that the completed and signed form (Annexure 2) is kept on site for inspection by an inspector, client, client's agent or employees on site.

4.2. Management and supervision

For this contract the Contractor will be mandatory of the Employer as defined in the OHSACT, which means the contractor has the status of employer in his own right in respect of the contract.

Before commencement of the work under the contract, the Contractor shall enter into an agreement with the Employer, as per attached Annexure 1, to confirm his status as mandatory (employer) for the contract under consideration as required by Section 37 of the OHSACT.

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The Contractor shall appoint competent persons to manage and supervise construction work as required in terms of Construction Regulation 6. Appointments of these personnel and employees does not relieve the Contractor from any of the obligations under Construction Regulation 6.

The Contractor shall ensure that all construction work is carried out under the supervision of competent persons at all times. Any afterhours work shall be done under the supervision of competent persons.

4.3. Contractor agreements with mandataries, contractors and subcontractors

Any sub-contractors employed by the Contractor must be appointed in writing setting out the terms of the appointment in respect of health and safety as per OHSACT Section 37 (1) and (2). An independent sub-contractor shall however provide and demonstrate to the Contractor a suitable, acceptable and sufficiently documented health and safety plan before commencement of the sub-contract. In the absence of such a health and safety plan the sub-contractor shall undertake in writing that he will comply with the Contractor's safety plan, the health and safety specifications of the Employer and the Construction Regulations.

4.4 Registration with the Compensation Commissioner

The Contractor has to comply with the Compensation for Occupational Injuries and Diseases Act of 1993 (No. 130 of 1993), which ensures compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases.

4.5 Appointments and requirements

Health and safety induction training

The Contractor shall ensure all employees under his control, including sub-contractors and their employees undergo a health and safety induction training course by a competent person before commencement of construction work. No visitor or other person shall be allowed or permitted to enter the site of the works unless such person has been inducted on the health and safety pertaining to hazards and risks prevalent on the site.

Competent Safety personnel

a) Construction supervisor [Construction Regulation 6(1)] -

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the Contractor shall appoint in writing a full-time construction supervisor with the duty of supervising the construction work.

b) Assistant construction supervisor [Construction Regulation 6(2) – the Contractor shall appoint in writing an assistant construction supervisor, with the duty of assisting in the supervising of construction work.

c) Safety Officer [Construction Regulation 6(6) – the Contractor shall after taking into consideration the size of the project as well as the dangers and hazards that can be expected, appoint in writing a full time or part time construction safety officer.

d) Health and safety representatives [OHSACT Section 17&18 and General Administrative Regulations 6&7] – the Contractor shall appoint health and safety representatives where 20 or more persons are employed. There shall be one additional representative for each 50 employees thereof. The duties of the safety representatives shall be as set out in Section 18 OF THE OHSACT.

e) Health and safety committee [OHSACT Section 19&20 and General Administrative Regulation 5 –

the Contractor shall one or more health and safety committee(s) where there are two or more health and safety representatives at a workplace. The persons selected to serve on the committee shall be designated in writing. The functions of the health and safety committee(s) shall be as set out in Section 20 of the OHSACT.

Competent persons

In accordance with the Construction Regulations the Contractor has to appoint in writing competent persons responsible for supervising construction work on each of the following work situations that may be expected on the site of the works:

Blasting Supervisor

Explosive Regulation 12

Construction Vehicles/Mobile Plant/

Machinery Supervisor

Construction Regulation 21

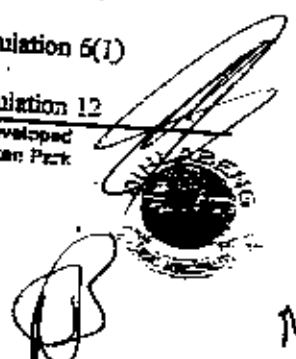
Construction Supervisor

Construction Regulation 6(1)

Demolition Supervisor

Construction Regulation 12

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Drivers/Operators of Construction Vehicles/Plant	Construction Regulation 21
Electrical Installation and Appliances Inspector	Construction Regulation 22
Emergency/Security/Fire Coordinator	Construction Regulation 27
Excavation Supervisor	Construction Regulation 11
Fall Protection Supervisor	Construction Regulation 8
First Aider	General Safety Regulation 3
Fire Fighting Equipment Inspector	Construction Regulation 27
Formwork and Support work Supervisor	Construction Regulation 10
Hazardous Chemical Substances Supervisor	HCS Regulation 10
Incident Investigator	General Admin Regulation 9
Lifting Machines and Equipment Inspector	Construction Regulation 20
OH&S Committee	OHSACT Section 19
OH&S Officer	Construction Regulation 6(6)
OH&S Representatives	OHSACT Section 17
Person Responsible for Machinery	General Machinery Reg.2
Risk Assessor	Construction Regulation 7(1)
Scaffolding Supervisor	Construction Regulation 14
Stacking and Storage Supervisor	Construction Regulation 26
Structures Supervisor	Construction Regulation 9
Traffic Management Supervisor	OHSACT Section 9(1)
Working on or next to water Supervisor	Construction Regulation 24

A competent person may be appointed for more than one part of the construction work with the understanding that the person must be suitably qualified and able to supervise at the same time. The appointment of a competent person does not relieve the Contractor from any of his responsibilities to comply with all requirements of the Construction Regulations.



4.6 Risk assessments

Before commencement of construction work, the Contractor shall conduct baseline risk assessments to identify and evaluate the risks and hazards that may be expected during the execution of the work under the contract and it shall include a documented plan of safe work procedure to mitigate or control risks and hazards.

4.7 Public safety and fencing

The Contractor shall ensure that

- Proper fencing / restriction is erected and maintained around the construction area;
- proper entrance to the site is established;
- necessary warning and safety signs are displayed at the entrance and around the construction site where necessary;
- entry to the site is controlled during construction operations, and that after hours, the site is safely locked and
- dust control shall be implemented on an ongoing basis during construction operations.

4.8 Fall protection plan

The Contractor shall draw up a fall protection plan which will comply in all respects with Construction Regulation 8. A competent person shall be appointed to implement and supervise work at elevated areas.

4.9 Excavation Work

It is essential that the Contractor fully follows the instructions and precautions in the standard specifications and project specifications as well as the provisions of the Construction Regulations as unsafe excavations can be a major hazard on any construction site. The Contractor shall therefore ensure that all excavation work is carried out under the supervision of a competent person, that inspections are carried out and recorded regularly and that all work is done in such a manner that no hazards are created by unsafe excavations and working conditions. The Contractor shall comply with all provisions in Construction Regulations 11

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4.10 Formwork and support work

The Contractor shall be responsible for the adequate design of all formwork and support structures by a competent person. All drawings pertaining to formwork shall be kept on site and all equipment and materials used in formwork shall be carefully examined and checked for suitability and safety by a competent person. The Contractor shall comply with all provisions in Construction Regulation 10.

4.11 Structures

The Contractor shall ensure that all reasonable and practicable steps are taken to prevent the uncontrolled collapse of any new or existing structures or any part thereof, which may become unstable due to carrying out of construction work. The Contractor shall comply with all aspects of Construction Regulation 9.

4.12 Lifting Machines and lifting tackle

The Contractor shall ensure that all lifting machine and equipment is constructed with generally accepted technical standards and is clearly marked with maximum mass load, which it is designed to carry with safety. The Contractor shall ensure that lifting machines and lifting tackle are erected and used as per the requirements of the Driven Machinery Regulation 18 and Construction Regulation 20.

4.13 Working with concrete

The Contractor shall ensure that proper precautions are taken before any work with concrete can commence. Where appropriate proper protective clothing should be worn, this includes rubber boots, pvc gloves, suitable eye protection etc. when operating concrete vibrators. Running water should be easily accessible should concrete get into any person's eyes and first aid should be applied immediately. Proper and safe working procedures should always be followed when using concrete to carry out construction work duties.

4.14 Working in confined spaces

The Contractor shall ensure that all work in confined spaces is carried out in terms of the requirements of General Safety Regulation 5.



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4.15 Working on or close to water

The Contractor shall ensure that all work undertaken over or in close proximity to water complies with all provisions of Construction Regulation 4.

4.16 Use and temporary storage of hazardous chemicals

The Contractor shall ensure that the usage and storage of hazardous chemicals on site is closely monitored. A proper register of the use and storage should be kept and regularly updated. Strict compliance with the Hazardous Chemical Substances (HCS) Regulations as well as Construction Regulation 23 should be adhered to at all times.

4.17 Welfare facilities

The Contractor shall ensure that all welfare facilities for employees and other persons coming on site adhere with construction site provisions in the Facilities Regulations and the provisions of Construction Regulations 28.

4.18 HIV/AIDS Awareness Programme

The Contractor shall implement an HIV/AIDS awareness programme for all employees. Please refer to the attached Annexure 3 (HIV/Aids awareness programme specifications)

4.19 Reporting of incidents

The Contractor shall report all incidents occurring at the workplace as contemplated in Section 24 of the OHSACT and General Administrative Regulations 8. The Contractor shall obtain an incident record book, in the form of Annexure 1 of the General Administrative Regulations, where he shall record all incidents occurring at the workplace.

4.20 First aid

The Contractor shall ensure that all first aid requirements are met as per General Safety Regulations.

4.21 Emergency procedures and fire protection.

The Contractor shall ensure that an evacuation plan is drawn up for cases of emergency. A safe assembly point shall be established on site. Emergency procedures shall be communicated to all employees, contractors and the professional team during induction.

The necessary precautions should be taken to prevent the incidence of fires on site, adequate and sufficient fire protection equipment, sirens, fire drill and escape routes should be available.

All emergency procedures and fire protection procedures should be in accordance with Environmental Regulation 9 and Construction Regulations 27.

4.22 Special permits

Where special permits are required before work may be carried out such as occupancy certificates for employees staying on site, the Contractor shall apply to the relevant authority for such permits to be issued. The Contractor shall comply with the conditions and requirements pertaining to the issue of such permits.

4.23 Health and Safety File

The Contractor shall ensure that a health and safety file is opened and kept on site. This shall include all documentation as required by the OHSACT and applicable Regulations. The file should always be made available to the inspectors, contractors and the professional team as and when required during the construction period. The Contractor shall upon completion of the construction work, hand over a consolidated health and safety file (which in addition to the documentation mentioned in the OHSACT and applicable Regulations include a record of all drawings, designs, materials used and other similar information concerning the completed project) to the Project Manager for the Employer's safe keeping for a minimum period of 18 years.

5. CONCLUSION

The forgoing is a summary of the OHSACT and applicable Regulations applicable to construction projects. The Contractor as employer for the execution of the contract, shall ensure that all provisions of the OHSACT and Regulations applicable to the contract under consideration are complied with fully. Should the Contractor fail to comply with the provisions of the OHSACT and applicable Regulations, he will be guilty of an offence and will be liable, upon conviction, to the fines or imprisonment as set out in Construction Regulation 30.

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The Contractor is advised in his own interest to make careful study of the OHSACT and applicable Regulations as ignorance will not be accepted in any proceedings related to non-conformance to the OHSACT and applicable Regulations.

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ANNEXURE 1

ASSIGNMENT OF DUTIES

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ANNEXURE I
OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993)
OHSACT SECTION 16(2)

DECLARATION

In terms of the abovementioned I _____ am
personally assuming the duties and obligation as chief Executive Officer, defined in Section
16 (2) of the OHSACT. I will as far as is reasonable practicable, ensure that the duties and
obligation of the Employer as contemplated in the OHSACT are properly discharged.

Signature: _____

Date: _____

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[Handwritten initials]
[Handwritten initials]
[Handwritten initials]



ANNEXURE 2

NOTIFICATION OF CONSTRUCTION WORK

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ANNEXURE 2

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

Regulation 3(1) of the construction Regulations

NOTIFICATION OF CONSTRUCTION WORK

1.(a) Name and postal address of principal contractor:

(b) Name and telephone of the contractor's contact person:

2. Principal contractor's compensation commissioner registration number:

3.(a) Name and postal address of client:

(b) Name and telephone no of the client's contact person:

4. (a) Name and postal address of the architects for the project:

(b) Name and telephone number of the architects' contact person:



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5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of Construction Regulation 6(1)

6. Name/s of principal contractor's construction sub-ordinate supervisor on site appointed in terms of Construction Regulation 6(2).

7. Exact physical address of the construction site or site office:

8. Nature of the construction work:

9. Expected commencement date:

10. Expected completion date:

11. Estimated maximum number of persons on the construction site:

12. Planned number of contractors on the construction site accountable to the principle contractor:




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13. Name(s) of contractors already chosen.

For the Principal Contractor

Name in print

Signature

Date

For the client

Name in print

Client

Date

***THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR PRIOR TO COMMENCEMENT OF WORK ON SITE.**

***ALL PRINCIPAL CONTRACTORS THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF ANOTHER PRINCIPAL CONTRACTOR ON THE SAME SITE HAD DONE SO PRIOR TO THE COMMENCEMENT OF WORK.**



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ANNEXURE 3

SITE ACCESS CERTIFICATE

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ANNEXURE 3
SITE ACCESS CERTIFICATE

Access to:

_____ (Area)

Name of contractor:

Contract no:

The contract works site/area described above are made available to you for the carrying out of associated works in terms of your contract/order with (Client)

Kindly note that you are at all times responsible for the control and safety of the Works Site, and for persons under your control having access to the site.

As from the date hereof you will be responsible for the compliance with the requirement of Occupational Health and Safety Act, 1993 (Act 85 of 1993) as amended, all conditions of the Contract pertaining to the site of the works as defined and demarcated in the contract document including the plans of the site or work areas forming part thereof.

PROJECT MANAGER

Signed: _____ Date: _____

ACKNOWLEDGEMENT OF RECEIPT

Name of Principal Contractor

I do hereby acknowledgement and accept the duties and obligation in respect of Safety of the site/area of Work in terms of the Occupational Health and Safety Act: Act 85 of 1993.

Name: _____ Designation: _____

Signature: _____

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